



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 31032107

Date: MAY 22, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability in culinary arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition. Although the Director addressed criteria pertinent to the requested classification in a prior request for evidence (RFE), the Director addressed eligibility criteria for a separate classification in the decision denying the benefit request. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the appeal.

The Petitioner indicated on the Form I-140, Immigrant Petition for Alien Workers, that he requested classification as an individual of extraordinary ability, as contemplated by section 203(b)(1)(A) of the Act. The Petitioner did not indicate on the Form I-140 that he requested classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts or business, and a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

In a prior RFE, the Director acknowledged that the Petitioner requested classification as an individual of extraordinary ability. Furthermore, in the RFE the Director addressed eligibility criteria particular to the extraordinary ability classification. Nevertheless, in the decision the Director addressed whether the record satisfies the framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), ultimately concluding that the Petitioner “is not eligible for, and does not merit, a national interest waiver as a matter of discretion.” However, the Director did not address whether the Petitioner is eligible for classification as an individual of

extraordinary ability, as he requested on the Form I-140. Moreover, the record does not clarify why the Director addressed eligibility criteria other than that which the Petitioner requested.

On appeal, the Petitioner objects to the Director's misapplication of national interest waiver criteria to the Petitioner's request for classification as an individual of extraordinary ability, asserting that it "demonstrates a fundamental misunderstanding of the distinct requirements for each classification." The Petitioner reasserts on appeal that he is eligible for the classification he requested.

Because the Director did not address whether the record satisfies eligibility criteria for the classification the Petitioner requested when denying the benefit request, there is not a sufficient adverse decision for our adjudication on appeal. *See generally* 8 C.F.R. § 103.3(a)(1)(i) (requiring U.S. Citizenship and Immigration Services to explain in writing the specific reasons for denying a benefit request).

Based on the foregoing, we will remand the matter for the entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination regarding whether the Petitioner qualifies for the requested classification. As such, we express no opinion regarding the ultimate resolution of this case on remand.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.